

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KORE CAPITAL CORPORATION,)
6701 Democracy Boulevard, Suite 300) No. 2:21-cv-03485
Bethesda, Maryland 20817,)
)
Plaintiff,)
)
v.)
)
STONEMOR OPERATING LLC)
3331 Street Road, Suite 200)
Bensalem, Pennsylvania 19020)
)
Defendant.)

COMPLAINT FOR MONEY JUDGMENT

Plaintiff KORE Capital Corporation (“KORE”) files this Complaint against Defendant StoneMor Operating LLC (“StoneMor”) and states as follows:

Parties

1. KORE is a Virginia corporation with its principal office at 6701 Democracy Boulevard, Suite 300, Bethesda, Maryland 20817.
2. StoneMor is a Delaware limited liability company with its principal office at 3331 Street Road, Suite 200, Bensalem, Pennsylvania 19020. StoneMor is registered to do business in the Commonwealth of Pennsylvania.

Jurisdiction and Venue

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) in that the dispute is between citizen of different states and the amount in controversy exceeds \$75,000.00.
4. Venue is proper in this Court pursuant to 28 U.S.C §§ 1391(a) and (b).

Factual Background

5. StoneMor and Moon Landscaping, Inc. (“Moon”) are parties to a Master Services Agreement dated April 2, 2020 (the “MSA”), a copy of which is attached as Exhibit No. 1.

6. Pursuant to the MSA, Moon agreed to perform property management and operational services for StoneMor. Under the MSA, StoneMor agreed to pay Moon for such services.

7. KORE has made available a revolving line of credit in the maximum principal amount of Four Million Dollars (\$4,000,000.00) (the “Loan”) to Moon and related entities (collectively, the “Borrowers”) pursuant to a Revolving Credit and Security Agreement dated May 15, 2020, between the Borrowers and KORE, modified by a Loan Modification Agreement dated September 16, 2020, a Forbearance/Loan Modification Agreement dated December 30, 2020, a Second Loan Modification Agreement dated May 24, 2021, and a Waiver/Loan Modification Agreement dated June 28, 2021 (as modified and amended from time to time, the “Loan Agreement”). A copy of the Loan Agreement is attached as Exhibit No. 2.

8. Under the Loan Agreement, Moon granted a security interest in favor of KORE against Moon’s accounts receivable.

9. KORE perfected its security interest in Moon’s accounts receivable by recording a financing statement with the Pennsylvania Department of State on May 18, 2020 (Instrument No. 202005180194), a copy of which is attached as Exhibit No. 3.

10. Pursuant to its rights under the Loan Agreement and Section 9-406 of the Uniform Commercial Code, KORE notified StoneMor on May 26, 2020, that Moon had assigned its present and future accounts to KORE and that StoneMor must thereafter pay all amounts that

it owed to Moon into KORE's account. A copy of the May 26, 2020 notice (the "Notice of Assignment") is attached as Exhibit No. 4.

11. Moon acknowledged this assignment pursuant to its own letter to StoneMor dated May 20, 2020 and by e-mail dated July 10, 2020. Attached as collective Exhibit No. 5 are copies of the May 20, 2020 letter and the July 10, 2020 e-mail.

12. Contrary to the Notice of Assignment and Moon's acknowledgement, StoneMor failed to remit \$1,957,240.33 to KORE on or about July 1, 2020, and instead delivered the payment to Moon.

13. Between July 15, 2020 and July 1, 2021, StoneMor complied with KORE's payment instructions in its Notice of Assignment by making payments directly to KORE.

14. By e-mail dated July 15, 2021, KORE reiterated to StoneMor that the assignment had occurred and was still in effect and that StoneMor must continue to make payments to KORE rather than to Moon or any other party. Attached as Exhibit No. 6 is a copy of the July 15, 2021 e-mail.

15. Notwithstanding these instructions and the requirements of applicable law, and at Moon's request, StoneMor diverted on July 16, 2021, the amount of \$1,294,828.00 to Moon's account instead of KORE's account.

16. StoneMor has not complied with KORE's demand to turn over the \$1,294,828.00 payment to KORE.

17. Notwithstanding the Notice of Assignment and the requirements of applicable law, StoneMor diverted on August 3, 2021, \$939,498.68 to Moon's account instead of KORE's account.

18. Pursuant to the Loan Agreement and the Notice of Assignment, KORE is an

assignee of Moon with respect to its right to collect accounts receivable from Moon's account debtors, including StoneMor. As such, StoneMor was obligated to direct its payments to KORE to satisfy amounts owed to Moon under the MSA.

Breach of Contract

19. Pursuant to the MSA, StoneMor is an account debtor of Moon.
20. KORE stands in the shoes of Moon with respect to StoneMor's obligation to pay amounts due to Moon.
21. Contrary to the Notice of Assignment and the MSA, StoneMor failed to remit \$1,957,240.33 to KORE on or about July 1, 2020, and instead paid that amount to Moon.
22. Contrary to the Notice of Assignment and the MSA, StoneMor failed to remit \$1,294,828.00 to KORE on or about July 16, 2021, and instead paid that amount to Moon.
23. Contrary to the Notice of Assignment and the MSA, StoneMor failed to remit \$939,498.68 to KORE on or about August 1, 2021, and instead paid that amount to Moon.
24. Since, pursuant to the Notice of Assignment and the MSA, StoneMor was obligated to remit the aforementioned payments to KORE, the failure to do so constitutes a breach of the MSA.
25. As a direct and proximate result of StoneMor's breaches, StoneMor is indebted to KORE in the amount of \$4,191,567.01.

WHEREFORE, KORE demands that this Court enter judgment in its favor and against StoneMor as follows:

- a. Awarding KORE monetary damages in an amount to be determined at trial, but not less than \$4,191,567.01;

- b. Awarding KORE monetary damages for any additional payments by StoneMor to Moon;
- c. Awarding KORE all costs and fees of this action as permitted by law; and
- d. Awarding KORE such other relief as this Court deems just and proper.

/s/ John H. Hykes III

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